

**BEFORE THE MINNESOTA
BOARD OF PHYSICAL THERAPY**

In the Matter of the
Physical Therapy License
of Richard J. Ness, P.T.
Date of Birth: 2/17/1964
License Number: 4648

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Richard J. Ness, P.T. ("Respondent"), and the Complaint Review Committee ("Committee") of the Minnesota Board of Physical Therapy ("Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice physical therapy in the State of Minnesota.
2. Respondent has been advised by Board representatives that he may choose to be represented by legal counsel in this matter. Although aware of his right to representation by counsel, Respondent has knowingly and expressly waived that right. The Committee was represented by Nathan W. Hart, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, telephone (651) 296-7575.

FACTS

3. For the purpose of this stipulation, the Board may consider the following facts as true:
 - a. Respondent was licensed as a physical therapist on May 29, 1990.
 - b. On at least 15 separate occasions, Respondent allowed physical therapist assistants to treat patients before a physical therapist performed an initial evaluation and treatment.

STATUTES

4. The Committee views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 148.75(a)(1) (violated a statute, rule, or order that the Board is authorized to enforce), (6) (engaged in unprofessional conduct), and (11) (inappropriately delegated to a physical therapist assistant) (2008). Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action under these statutes.

REMEDY

5. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order as follows:

a. Respondent is hereby **REPRIMANDED** for the conduct referenced above.

b. Respondent shall pay to the Board a **CIVIL PENALTY** of \$1000.00 within 60 days of the date this Stipulation and Order is adopted by the Board.

6. Respondent is responsible for all costs incurred as a result of compliance with this Stipulation and Order.

7. Within ten days of the date of this Order, Respondent shall provide the Board with a list of all hospitals and skilled nursing facilities at which Respondent currently has privileges, a list of all states in which Respondent is licensed or has applied for licensure, and the addresses and telephone numbers of Respondent's residences and all work sites. Within seven days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Stephanie Lunning, Minnesota Board of Physical

Therapy, University Park Plaza, 2829 University Avenue S.E., Suite 420, Minneapolis, Minnesota 55414-3664.

8. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of his residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice physical therapy.

9. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the Committee shall schedule a hearing before the Board. The Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Respondent shall submit a response to the allegations at least three days prior to the hearing. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice, or suspension or revocation of Respondent's license.

10. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto.

11. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

12. Respondent hereby acknowledges that he has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

Dated: 5/18/10

SIGNATURE ON FILE

Richard J. Ness
RICHARD J. NESS, P.T.
Respondent

Dated: 7-15-2010

SIGNATURE ON FILE

[Signature]
FOR THE COMMITTEE

ORDER

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 15th day of July, 2010.

MINNESOTA BOARD OF
PHYSICAL THERAPY

SIGNATURE ON FILE

STEPHANIE LUNNING
Executive Director

AG: #2633698-v1